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FEDERAL COMMUNICATIONS COMMISSION

AUG 18 1998

In the Matter of )  
Section 255 of the )  
Telecommunications Act of 1996 ) WT Docket Number 96-198

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## COMMENTS OF

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### I. Introduction

The Boston Center for Independent Living submits these comments to the Federal Communications Commission (FCC) on its proposed Section 255 rules. The Boston Center for Independent Living is an organization that provides information and referral, skills training, peer counseling, and systems advocacy for individuals with disabilities in fifty-two cities in towns in Eastern Massachusetts. We are interested in the section 255 rules because we believe that if they are adopted it will be a giant step to fulfilling our dream of a completely barrier-free society for individuals with disabilities.

We applaud the FCC for issuing proposed rules to implement Section 255 of the Telecommunications Act of 1996. Increased access to telecommunications equipment is critical to expanding employment, educational and recreation opportunities for individuals, who are deaf or hard of hearing, blind, or who have speech impairment. We urge the FCC to adopt the suggestions contained in these comments so that our needs are fully considered in the design, development, and the fabrication of telecommunications and services.

Several Concrete examples of this lack of communication access follow: We have heard stories from the consumers with whom we work of the frustration that they feel when they try to use the voice response systems which are getting very ubiquitous in American corporations these days. Persons who use TTYs report that they are unable to use these voice response systems because they are either limited to either output in BAUD or ASCII code or they are too fast for transliteration by the relay services mandated by Title IV of the Americans with Disabilities Act. We have also heard that telecommunications products that require an immediate response by the user have caused a great deal of anxiety in some of our consumers who have speech impairments because they cannot generate a response fast enough.

### II. Adoption of Access Board Guidelines

We strongly urge the Commission to adopt the Section 255 guidelines that were issued by the Architectural and Transportation Barriers Compliance Board (Access Board) on February 3, 1998. Congress had given the Access Board the primary authority to draft those guidelines, which now should be enforced by the FCC. Although the Access Board guidelines apply to equipment manufacturers, we now recommend that the FCC apply these as well to service providers. The guidelines are comprehensive, and are the product of the Telecommunications Access Advisory Committee, which consisted of representatives from both consumer and industry organizations. In

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addition to the guidelines on achieving accessibility, we especially urge the FCC to adopt and enforce the following guidelines for both service providers and equipment manufacturers:

- Where market research on products and services is performed, individuals with disabilities should be included in the populations researched;
- Where product design trials and pilot demonstrations are conducted, individuals with disabilities should be included in these activities;
- Reasonable efforts should be made to validate access solutions through testing with individuals with disabilities or related organizations;
- Manufacturers and service providers should be required to provide access to product and service information and documentation on products and services and their accessibility features, including information contained in user and installation guides. To the extent that such information is made available to the general public, it should be made available in accessible formats or modes upon request, at no extra charge. Manufacturers should also include the name and contact names for obtaining information about (1) accessibility features and (2) how to obtain documents in alternate formats, in general product information. Additionally, customer and technical support provided at call and service centers should be accessible by persons with disabilities. For persons who are who are deaf or hard of hearing, captioning on video cassettes containing product instructions, direct TTY access to customer service lines, text transpositions for audio output on Internet postings, and automated TTY response systems which detect whether a caller is using voice or TTY and which enable the caller to complete a call in accessible format, should be used to comply with these access requirements;
- The Access Board guidelines make clear that in addition to covering new products, Section 255 covers existing products that "undergo substantial change or upgrade, or for which new releases are distributed." The changes to which this statement refers are those that affect the functionality of the product, rather than cosmetic changes. It is critical for both manufacturers and service providers to consider disability access as they make substantial changes or upgrades to their public offerings;
- The Access Board guidelines do not permit manufacturers to make changes that reduce access to products. This is to ensure that individuals with disabilities are not forgotten as improvements and upgrades to products and services are performed. It is critical that the FCC to adopt this guideline so those individuals with disabilities are not treated as second class consumers. Although we do not want to stifle innovation, we want to ensure that where improvements are made to products and services, the access function will be maintained. While we understand that the form of achieving access may need to change, there must be some assurance that some means of effective access continues to be available;
- The Access Board guidelines set forth certain technical standards for compatibility with specialized customer premises equipment, including compatibility with TTY's and hearing aid compatible telephones. These, too, should be adopted in the FCC's final rules.
- The FCC's proposed rules say that software will be covered only if the software is included with a telecommunications product. If it is marketed separately, the FCC has proposed that that it not be covered by Section 255. We oppose this interpretation of Section 255. Rather, so long as software has functions that are integral to telecommunications, it should be covered under the FCC's new rules. This would be consistent with Access Board guidelines which cover software, hardware, or firmware that are integral to telecommunications and CPE equipment, as well as functions and features which are built into a product and those provided from a remote server over a network.

### **III. Universal Design**

We support the FCC's decision to require an assessment of accessibility and compatibility for each product. This is what Section 255 requires as is stated in Access Board guidelines, the assessment as to whether or not can be achieved "cannot be bypassed simply because another product is already accessible." Rather, the goal of Section 255 is to achieve, where readily achievable, universal design for as many disabilities as possible. Only if that is not achievable, then it is reasonable to view the overall accessibility of the provider's products or services to determine how functionally similar products or services can be made accessible.

### **IV. Enhanced Services**

We are deeply concerned that enhanced services may not be covered under the FCC's new rules. The Telecommunications Act of 1996 emphasized the need to bring all of our citizens the benefits of advanced telecommunications technologies. The purpose of Section 255 was to ensure that this objective would be achieved for individuals with disabilities. This objective will be defeated if we are provided with access to little more than basic telephone service. Voice mail, interactive telephone prompt systems, and Internet telephony have already become mainstream services and are critical to successfully participating and competing in our society. These services must be made accessible if the true intent of Section 255—to achieve universal telecommunications access—is to be realized.

### **V. Readily Achievable Determinations**

Under Section 255, manufacturers must make their products accessible if it is readily achievable to do so. The "readily achievable" language comes from the Americans with Disabilities Act and involves a balancing of the nature and costs of including an access feature with the overall financial of the covered entity (with the resources of its parent company where applicable). We accept the FCC's suggestion that technical feasibility also may be considered in determining whether or not access to a product or service may be achieved. However, we oppose considering the extent to which an accessible product can be marketed (when compared to inaccessible products) and the extent to which the costs will be recovered, in readily achievable determinations. These are not permissible under the Americans with Disabilities Act and should not be included in the readily achievable analysis under Section 255.

### **VI. Complaint Process**

We are confused by the FCC's proposed complaint process, and in particular are uncertain as to when an individual has the right to move from the "fast track" to the "informal" or "formal" complaint processes, or when a complaint would be moved to an alternative dispute process. We request clarification of these points in the final rules, so that consumers may fully understand the means available to seek redress under Section 255. Additionally we adamantly oppose a rule that would require individuals with disabilities to first to receive approval from the FCC before being permitted to bring a formal FCC complaint. This is not a requirement for other formal complaints brought before the FCC and appears to be discriminatory against individuals with disabilities.

We do support the following FCC proposals concerning consumer complaints:

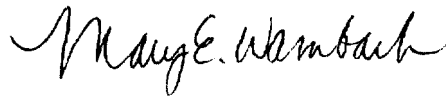
- There should be no filing fees for informal or formal complaints, and fees that currently exist for filing complaints against common carriers should be waived for complaints filed under Section 255. Waiving these fees would be in the public interest.
- There should not be any time limit for filing complaints, because one never knows when he or she will discover a product or service is inaccessible.

- Individuals with disabilities should be able to submit complaints by any accessible means available.
- Manufacturers and service providers should be required to establish contact points in their companies that are accessible by individuals with disabilities.

## **VII. Conclusion**

We thank the FCC for the opportunity to submit these comments, and urge the FCC to act promptly in issuing rules that will ensure telecommunications access by individuals with disabilities. We hope that equipment marketed by large and small public and private entities will be required to be labeled as "compatible" with FCC upgrades, and/or that such be regulated to be manufactured as such.

Respectfully submitted,

A handwritten signature in black ink, reading "Mary E. Wambach". The signature is written in a cursive, flowing style.

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